

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

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JMM PROPERTIES, LLC,

Plaintiff,

Civ. Action No.

5:08-CV-1382 (GTS/DEP)

vs.

ERIE INSURANCE COMPANY,

Defendant.

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APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF:

OFFICE OF DONALD R. GERACE  
2615 Genesee Street  
Utica , NY 13501

DONALD R. GERACE, ESQ.

WILKOFISKY, FRIEDMAN LAW FIRM  
299 Broadway  
Suite 1700  
New York , NY 10007

HARRY A. CUMMINS, ESQ.

FOR DEFENDANTS:

RUPP, BAASE LAW FIRM  
1600 Liberty Building  
424 Main Street  
Buffalo , NY 14202-3616  
DAVID E. PEEBLES  
U.S. MAGISTRATE JUDGE

MARCO CERCONE, ESQ.

ORDER

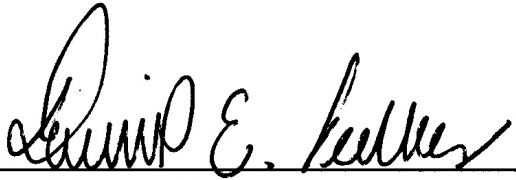
Currently before the court in connection with this action are cross-motions. The motion process was initiated by defendant's filing of a motion to disqualify Donald R. Gerace, Esq. from representing the plaintiff. Dkt. No. 29. Plaintiff has since opposed that motion and cross-moved for an award of sanctions, including costs and attorneys' fees incurred in having to defend against the motion, which it characterizes as frivolous and interposed for purely tactical purposes. Dkt. No. 33.

Oral argument was conducted on July 29, 2009 in connection with the parties' cross-motions. At the close of argument I issued an oral decision denying both motions.

Based upon the foregoing and the court's bench decision, which is incorporated herein by reference, it is hereby

ORDERED that defendant's motion to disqualify counsel (Dkt. No. 29) and plaintiff's cross-motion for an award of costs and attorneys' fees (Dkt. No. 33) are both DENIED.

Dated: July 23, 2009  
Syracuse, NY

  
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David E. Peebles  
U.S. Magistrate Judge